

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, DC 20007**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY  
LOS ANGELES, CA  
HOUSTON, TX  
AUSTIN, TX  
CHICAGO, IL  
PARSIPPANY, NJ  
STAMFORD, CT  
BRUSSELS, BELGIUM

AFFILIATE OFFICE  
MUMBAI, INDIA

October 1, 2018

**By ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **National Lifeline Association Notice of Oral *Ex Parte* Presentation,  
WC Docket Nos. 17-287, 11-42 and 09-197**

Dear Ms. Dortch:

On September 27, 2018, John Heitmann of Kelley Drye & Warren LLP met separately with Jamie Susskind from the Office of Commissioner Carr and Travis Litman from the Office of Commissioner Rosenworcel to discuss the recent and proposed changes to the Lifeline program in the above-referenced proceedings.<sup>1</sup> The discussions were consistent with the attached documents and prior comments, reply comments and submissions filed by NaLA in the above-referenced dockets.<sup>2</sup>

---

<sup>1</sup> See *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017).

<sup>2</sup> See Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Feb. 21, 2018); Reply Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Mar. 23, 2018); Comments of NaLA on the Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier to Optimize the Automated and Manual Eligibility Verification Processes, WC Docket Nos. 11-42, 09-197 (Sept. 12, 2018); Comments of NaLA on Petitions of TracFone and NTCA Regarding the Lifeline Minimum Service Standards, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 30, 2018); Comments of NaLA on Emergency Petition of Q Link Wireless for an Order Directing the Universal Service Administrative Company to Implement Machine-to-Machine Interfaces for

**KELLEY DRYE & WARREN LLP**

Marlene Dortch  
October 1, 2018  
Page Two

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann  
Joshua Guyan  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
(202) 342-8400

*Counsel to the National Lifeline Association*

cc: Travis Litman  
Jamie Susskind

---

the National Verifier, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 10, 2018); National Lifeline Association Notice of Ex Parte Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 6, 2018); National Lifeline Association Notice of Ex Parte Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed May 24, 2018); National Lifeline Association Notice of Ex Parte Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed May 4, 2018); National Lifeline Association Notice of Oral Ex Parte Presentation, Meeting with Chairman Ajit Pai and Jay Schwarz, WC Docket Nos. 17-287, 10-90, 09-197 (filed Sep. 19, 2018); National Lifeline Association Notice of Oral Ex Parte Presentation, Meeting with Arielle Roth from the Office of Commissioner O'Rielly, WC Docket Nos. 17-287, 10-90, 09-197 (filed Sep. 19, 2018).

# **EXHIBIT A**



## Lifeline Reform 3.0: Getting It Right by Putting Low-Income Consumers First

### NaLA Champions Regulatory Reform While Promoting Industry Self-Regulation and Best Practices.

Since 2012, NaLA and its member companies have been strong proponents of industry self-regulation, best practices and regulatory reforms designed to preserve the integrity of the Lifeline program by protecting it from waste, fraud and abuse while promoting affordable access to essential communications services.

- NaLA's agent certification program, real-time review, photo ID and proof capture, and pre-NLAD intra- and inter-ETC duplicate screening are examples of how NaLA and its member companies develop and implement self-regulatory best practices to guard against potential waste, fraud and abuse

### The Proposed Ban on Wireless Resellers Must Be Rejected.

Wireless resellers play a central role in the Lifeline program by driving adoption, competition and service-level innovation. The record contains nearly unanimous opposition to the proposed wireless reseller ban, including comments from CTIA, US Telecom, Verizon, Sprint, NARUC and several states individually, NASUCA, Citizens Against Government Waste, Veterans and Seniors organizations. **Eliminating wireless resellers would:**

- **Harm consumers** by forcing about 7 million or roughly 70% of all Lifeline subscribers to find new Lifeline service providers and plans, leaving too many without affordable options and some with no options at all
- **Fail to bolster program integrity or guard against waste, fraud and abuse** (adopting conduct-based standards and agent registration would properly focus on bad actors rather than on business models)
- **NOT bridge the digital divide** (eliminating resellers would end the primary means through which Lifeline spurs facilities deployment)
- **Upend the states' role in designating ETCs**, as well as the reliance interests of wireless resellers and landline providers (who have been relieved of the obligation to provide Lifeline based on the presence of and consumers' preference for the mobile voice and broadband services offered by wireless resellers)

### The FCC Should Maintain Facilities Forbearance.

The FCC should not depart from a decade worth of precedents in which it has concluded that **Section 10 requires forbearance** from the facilities requirement for Lifeline ETCs.

- Adopting the facilities definition proposed in the NPRM would be arbitrary and capricious; doing so would disregard the statutory language acknowledging resale

### The Subsidy Pass-Through Proposal Is Functionally a Reseller Ban that Must Be Rejected.

The proposal to require resellers to pass-through to their underlying carrier the full amount of the \$9.25 subsidy would **eliminate wireless resellers** from the program, as there would be no revenue left to support the product and services.

- Once the full amount of the discount is applied to the services and reimbursed, the FCC should not regulate

### The FCC Should Prioritize Affordability and Consumer Choice by Correcting Past Missteps.

The FCC should roll-back the Wheeler era **minimum service standards** and **voice support phase-out** that threaten to deny consumers access to affordable choices that best meet their needs.

- Full support for voice services should be available everywhere – not just in rural America
- The FCC should act now to prevent unintended minimum service standards-driven price increases on Lifeline subscribers
- Freezing or eliminating automatically escalating Lifeline minimum service standards will allow consumers to choose among options of voice and data, including bundles, that strike the best balance between affordability and access for each consumer
- Any minimum service standards retained should incorporate a **1,000 unit standard** that empowers consumers to use bundled voice and data services in a manner that best meets each consumer's needs

## **The National Verifier Must Incorporate a Service Provider API and More Robust Access to Eligibility Databases to Reduce Barriers for Eligible Consumers, Minimize Program Costs and Eliminate Waste, Fraud and Abuse.**

The FCC should fully implement the National Verifier prior to considering additional requirements to provide proof of eligibility upon recertification, other than in cases where the consumer identifies a change in his or her qualifying eligibility program.

- The decision not to develop and implement a service provider API for the National Verifier is wasteful and unnecessarily burdensome for consumers, USAC and ETCs. **Without an API:**
  - USAC will need to screen 100% of all applicants instead of taking advantage of ETC screening tools thereby needlessly **increasing costs** to the program
  - Consumers will be forced to enter personal information twice creating a **barrier to participation** as well as posing **data integrity issues**, which will further increase costs by forcing manual USAC review of exceptions and higher call center volumes
  - ETCs will be unable to efficiently offer online enrollment, making it **more difficult and costly to enroll eligible subscribers, especially in rural areas**
- The National Verifier should not proceed to hard launch in any state in which it lacks access to enrollment databases that allow **automatic re-verification of a substantial majority of Lifeline subscribers** and verification of new applicants' eligibility
- The National Verifier should **leverage private party access to state eligibility databases** by accepting proof of eligibility generated by MCOs and other trusted third parties with such access

## **A Maximum Discount Requirement Would Be Administratively Unworkable.**

The maximum discount or a minimum charge proposal should be rejected because many Lifeline subscribers cannot consistently afford to pay set amounts and otherwise lack credit or other reliable means to pay.

- The benefits of developing a process to properly assess ability to pay and a system to impose and collect monthly payment requirements would fail to outweigh the costs of providing \$111 in annual benefits

## **NaLA Supports a Budget for the Lifeline Program.**

The Lifeline program could benefit from a self-enforcing budget mechanism that operates on an annual basis with prospective impact only. NaLA supports the **\$2.3B bipartisan budget** proposal endorsed by NARUC.

## **What the Right, Consumers First Outcome Looks Like.**

Lifeline is essential to bridging the affordability gap of the Digital Divide. Every low-income consumer who is eligible for Lifeline should have smooth and efficient access to a variety of service options and providers. **Upcoming Commission action on Lifeline should put consumers first by:**

- preserving the important market-based role **wireless resellers** play in the Lifeline program and restoring the ability of wireless resellers to participate in Tribal Lifeline
- solidifying the **National Verifier** as an essential safeguard against waste, fraud and abuse by requiring implementation of a service provider API, developing more robust access to eligibility databases, and leveraging trusted third party access to state databases
- adopt **conduct based standards** to target bad actors and operators needing improvement rather than entire business models; require **agent registration**
- **prioritizing affordability and consumer choice by rolling-back of Wheeler era rules** which sunset support for voice services (in all areas, not just in rural areas) and mandate unduly large service minimums that will force price increases on Lifeline subscribers
- preserving the **state role** in designating ETCs (where states accept that role), with **state and FCC decisions subject to reasonable shot-clocks** designed to ensure that consumers get the benefits of competition
- adopting the NARUC **bipartisan budget** proposal to cap the program at approximately \$2.3B

# **EXHIBIT B**

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, DC 20007**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY  
LOS ANGELES, CA  
HOUSTON, TX  
AUSTIN, TX  
CHICAGO, IL  
PARSIPPANY, NJ  
STAMFORD, CT  
BRUSSELS, BELGIUM

AFFILIATE OFFICE  
MUMBAI, INDIA

September 19, 2018

**By ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **National Lifeline Association Notice of Oral *Ex Parte* Presentation,  
WC Docket Nos. 17-287, 11-42 and 09-197**

Dear Ms. Dortch:

On September 17, 2018, David Dorwart, Chairman of Assist Wireless, LLC and the National Lifeline Association (NaLA); Kim Lehrman, President of Boomerang Wireless, LLC; Jose Cortes, Chief Strategy Officer of Easy Telephone Services Company dba Easy Wireless; Eric Schimpf, Chief Operating Officer of Global Connection Inc. of America dba Stand Up Wireless; and John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP met with Chairman Ajit Pai and Jay Schwarz to discuss a number of pending Lifeline program issues raised in the above-referenced proceedings.<sup>1</sup> The discussion was consistent with the attached exhibits and the comments and reply comments filed by NaLA on February 21, 2018 and March 23, 2018, as well as more recent NaLA filings.<sup>2</sup>

---

<sup>1</sup> See *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017).

<sup>2</sup> See Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Feb. 21, 2018); Reply Comments of the National Lifeline Association, WC Docket No. 17-287 et al. (filed Mar. 23, 2018); Comments of NaLA on the Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier to Optimize the Automated and Manual Eligibility Verification Processes, WC Docket Nos. 11-42, 09-197 (Sept. 12, 2018); Comments of NaLA on Petitions of TracFone and NTCA Regarding the

Marlene Dortch  
September 19, 2018  
Page Two

In the meeting, we conveyed that NaLA and its member companies share Chairman Pai's view that Lifeline has a very important role to play in closing the digital divide. Further, we also explained that NaLA shares and enthusiastically supports the Chairman's recently stated goal to "make sure that every American who needs help through the Lifeline program is able to get it."<sup>3</sup>

### **The Record Does Not Support the Proposal to Ban Resellers From the Lifeline Program**

In the meeting, we discussed the nearly complete lack of support in the record for the proposal to ban resellers from the Lifeline program. The proposal was opposed by CTIA, USTelecom, Verizon, Sprint, NARUC and several states individually, NASUCA, Citizens Against Government Waste, the Information Technology and Innovation Foundation (ITIF), Veterans and Seniors organizations, disability rights groups and scores of other commenters. The consensus is that the reseller ban would not bridge the digital divide by spurring additional facilities deployment or more affordable services. To the contrary, the commenters agree that a reseller ban would harm consumers by forcing more than 7 million or roughly 70 percent of all Lifeline subscribers to find a new Lifeline service provider (including about 1.3 million veterans), and in many cases, leaving the nation's most vulnerable consumers with no affordable wireless or wireline service options.

We discussed the Chairman's laudable goal of deploying more voice and broadband facilities to rural areas to reach unserved and underserved consumers. However, the overwhelming consensus in the record is that the Lifeline program is not the right program to address that goal. As Dr. John Mayo stated in his analysis, "[w]hile encouraging investment in broadband network deployment also serves as a legitimate economic goal, the Commission's proposal to shoehorn investment-promotion into the Lifeline program is inconsistent with Lifeline's economic role as an affordability program and ignores the fact that a variety of other

---

Lifeline Minimum Service Standards, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 30, 2018); Comments of NaLA on Emergency Petition of Q Link Wireless for an Order Directing the Universal Service Administrative Company to Implement Machine-to-Machine Interfaces for the National Verifier, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 10, 2018); National Lifeline Association Notice of *Ex Parte* Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed June 6, 2018); National Lifeline Association Notice of *Ex Parte* Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed May 24, 2018); National Lifeline Association Notice of *Ex Parte* Presentation, WC Docket Nos. 11-42, 09-197, 10-90 (filed May 4, 2018).

<sup>3</sup> See *Oversight of the Federal Communications Commission: Hearing Before the S. Committee on Commerce, Science and Transportation*, 115th Cong. (2018).



Marlene Dortch  
September 19, 2018  
Page Three

policy tools apart from Lifeline are both available to, and better-suited for, the Commission to advance broadband investment.”<sup>4</sup>

We also discussed whether wireless resellers’ goal is to transition to deploying their own last-mile facilities. We explained that the concept of eventually transitioning to owned last-mile facilities is more of a wireline concept than a mobile wireless one. Deploying facilities used to provide last-mile service to customers of Commercial Mobile Radio Services (CMRS), which is what wireless resellers provide to over 7 million Lifeline subscribers, requires access to spectrum necessary to serve Lifeline subscribers at home and on-the-go—in addition to construction of the necessary antennas and the placement of other equipment. Spectrum is a scarce resource that generally requires acquisition at auction (for commercial mobile purposes) for potentially millions of dollars and is not an option for the vast majority, if not all, of NaLA’s ETC members. A strategy of purchasing spectrum at auction certainly would not allow a Lifeline provider to obtain or maintain a nationwide footprint or provide affordable service to low-income consumers.

We noted that the major facilities-based wholesalers in the Lifeline space (Verizon, T-Mobile and Sprint) could not possibly lease spectrum for Lifeline service providers to serve low-income consumers (they need it to provide mobile wireless services to their own retail customers and wholesale partners). However, they are more than willing to make their networks available through resale so that Lifeline providers, which specialize in serving low-income customers, can provide affordable Lifeline service. As Dr. John Mayo concludes, “[f]acilities-based and non-facilities-based carriers (Mobile Virtual Network Operators or MVNOs) operate symbiotically to each provide economic value and enhance consumer welfare in the provisioning of modern communications services. The result of this relationship is enhanced capacity utilization and hence more investment than would happen in the absence of MVNOs.”<sup>5</sup> The most efficient means to provide affordable voice and broadband service to low-income consumers, as well as

---

<sup>4</sup> Comments of CTIA, WC Docket Nos. 17-287, 11-42 and 09-197, Declaration of Dr. John Mayo at 9 (Feb. 21, 2018) (Mayo Declaration). Similarly, in its comments, USTelecom stated, “[w]hile USTelecom strongly supports policies that encourage investment in broadband-capable networks, the Commission should not utilize the Lifeline program to achieve a goal for which it is not designed” and Verizon stated, “discontinuing support to resellers would undercut the main purpose of the Lifeline program, which is to address affordability.” Comments of USTelecom, WC Docket Nos. 17-287, 11-42 and 09-197 at 1-2 (filed Feb. 21, 2018) and Comments of Verizon, WC Docket Nos. 17-287, 11-42 and 09-197 at 9 (filed Feb. 21, 2018) (Verizon Comments).

<sup>5</sup> Mayo Declaration at 2. Verizon confirmed, “Lifeline consumers contribute revenue to the underlying facilities-based carrier regardless of whether it serves the customer directly or via resale.” Verizon Comments at 9-10.

Marlene Dortch  
September 19, 2018  
Page Four

incentivize more network investment, is the current market-based model whereby the nationwide facilities-based mobile carriers resell their networks to MVNO ETCs that specialize in serving the low-income customer with Lifeline-supported discounts.

We also explained that in areas where there is a facilities-based provider of retail Lifeline services, like Smith Bagley, reseller Lifeline ETCs should be able to compete where there are other networks available. Competition does not deter further deployment, but rather pushes carriers to improve facilities and service offerings for consumers. The Tribal Lifeline benefit goes to consumers (one per household) and consumers benefit from competition and typically suffer from a lack of it. While Smith Bagley seems to want the Commission to protect it from competition from resellers utilizing competing networks, it is notable that even it opposes the facilities requirement adopted by the Commission.<sup>6</sup>

**The Commission Should Restore Consumers' Ability to Choose the Most Affordable Service Packages That Best Meet Their Needs and Prevent Price Increases on Lifeline Subscribers by Eliminating or Freezing Prescriptive Service Level Standards and Reversing the Phase-Out of Support for Essential Voice Service**

We explained that putting consumers first involves near term action necessary to prevent price increases and further disenfranchisement of Lifeline-eligible low-income consumers. The so-called “minimum service standards” hurt low-income consumers because they limit participation in the program and will result in price hikes on those who do participate. Along with regulatory uncertainty, the Lifeline minimum service standards imposed by the Wheeler Commission in 2016 have been a major cause of the reduced Lifeline participation rate to about 25 percent of those eligible (approximately 9.5 million subscribers) because carriers cannot see the necessary return on investment from the cost of acquiring new Lifeline subscribers and of providing prescribed levels of service to them. Rather than perpetuating the paternalistically prescribed family-sized service plans and phase-out and elimination of support for critical voice services, the Commission should allow consumers to choose for themselves among options of voice and data, including bundles, that strike the best balance between affordability and access for the consumer.<sup>7</sup>

---

<sup>6</sup> Comments of Smith Bagley, Inc., WC Docket Nos. 17-287, 11-42 and 09-197 at 7 (filed Feb. 21, 2018)(“SBI opposes this proposal, at least for wireless networks, and especially those operating on Tribal lands.”).

<sup>7</sup> See Comments of NaLA on Petitions of TracFone and NTCA Regarding the Lifeline Minimum Service Standards, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 30, 2018).

Marlene Dortch  
September 19, 2018  
Page Five

As NTCA notes in its pending petition seeking relief from the minimum service standards, “budget constraints, as well as other structural issues, render 18/2 or 15/2 or even 10/1 BIAS unaffordable for many rural consumers, low-income or not.”<sup>8</sup> Similarly, mandatory minute and megabyte increases will make wireless services unaffordable for low-income consumers. For example, 1 GB of data typically retails for \$10 or more. On December 1, 2018, the minimum service standards will require an additional 1 GB of data, effectively raising prices on low-income consumers. Simply put, the government should not be telling consumers which speeds and how many minutes or how much data they are required to purchase regardless of whether they can afford it. Moreover, we emphasized that reversal of the Wheeler-era FCC practice of ignoring requests for compliance plan approvals and ETC designations will spur additional competition that will deliver more choices and affordable options for consumers.

**The Commission Should Ensure That it Implements a Robust and Effective National Verifier by Including a Service Provider API and Obtaining Access to Essential Eligibility Databases Prior to Hard Launch in a State**

We also highlighted that the record is nearly unanimous in support of the Commission’s implementation of an efficient and effective National Verifier. To be successful in meeting the stated goals for the National Verifier,<sup>9</sup> the Commission must promptly take two important actions at this early stage of development and implementation of the National Verifier. First, the Commission must order USAC to develop and implement service provider application programming interface (API) connectivity to the National Verifier. USAC’s decision thus far not to develop and implement a service provider API for the National Verifier is wasteful and unnecessarily burdensome for consumers, the National Verifier and ETCs. Without an API: (1) consumers will be forced to enter personal information twice creating a substantial burden and barrier to participation as well as potential data integrity issues that will further increase costs by forcing manual National Verifier review of exceptions and higher call center volumes; (2) the National Verifier will need to screen 100 percent of all applicants, rather than avoiding a substantial portion of these costs by taking advantage of ETC screening tools; and (3) ETCs will

---

<sup>8</sup> Petition for Temporary Waiver of NTCA – The Rural Broadband Association, WC Docket Nos. 11-42, 09-197, 10-90 at 9 (filed July 23, 2018) (NTCA Petition).

<sup>9</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶¶ 128-131 (2016) (2016 Lifeline Modernization Order).

Marlene Dortch  
September 19, 2018  
Page Six

be unable to offer online enrollment, making it more difficult and costly to enroll eligible subscribers, especially in rural areas.<sup>10</sup>

Second, the Commission must act to require USAC to secure access to the appropriate eligibility databases before hard launch of the National Verifier in any state. Because the vast majority of Lifeline applicants demonstrate eligibility through participation in Medicaid and Supplemental Nutrition Assistance Program (SNAP),<sup>11</sup> the Commission should order USAC not to move to hard launch of the National Verifier in a state until access to Medicaid and SNAP databases has been secured.<sup>12</sup> Moving to hard launch of the National Verifier in any state without access to these databases will force far too many eligible subscribers to be disconnected from their Lifeline service and will likely result in too many new eligible subscribers being denied access to Lifeline. The Commission can and should act promptly to protect Lifeline-eligible consumers from these harms.

#### **A Self-Enforcing Budget With Room for Growth Can Be Part of a Consumers-First Lifeline Reform Package**

Finally, we discussed NaLA's willingness to work with the Commission on the right outcome for Lifeline, which includes putting consumers first and creating regulatory certainty. NaLA is one of the few commenters to acknowledge that the Lifeline program could benefit from a self-enforcing budget mechanism. NaLA supports the bi-partisan \$2.25 billion budget proposal endorsed by NARUC. However, it should operate on an annual basis with prospective impact only and should not prioritize qualified and eligible subscribers in some areas of the country over others.

As explained earlier, the right outcome for consumers also includes (a) allowing resellers to continue to compete to serve them wherever they live, including Tribal lands and in states where the FCC grants ETC status, (b) empowering consumers to choose the services and packages that best meet their needs by rolling back rules that have the government do that for

---

<sup>10</sup> We have included, as Exhibit B, a graphic depicting the service provider API proposed by Q Link.

<sup>11</sup> The July 2018 National Verifier Plan notes that 62 percent of enrollments used Medicaid or SNAP, but that data was skewed by inclusion of eligibility programs that were removed in 2016. *See* National Verifier Plan (July 2018) at 7. More recent data from a NaLA member shows that 90 percent of its subscriber base enrolled through participation in Medicaid or SNAP.

<sup>12</sup> *See* Comments of NaLA on the Emergency Petition of TracFone Wireless, Inc. for an Order Directing USAC to Alter the Implementation of the National Verifier to Optimize the Automated and Manual Eligibility Verification Processes, WC Docket Nos. 11-42, 09-197 (Sept. 12, 2018).

**KELLEY DRYE & WARREN LLP**

Marlene Dortch  
September 19, 2018  
Page Seven

them (with predictably bad consequences however unintended); and (c) removing barriers to participation by eligible consumers by getting the National Verifier right with the addition of a service provider API and a requirement to access SNAP and Medicaid eligibility databases prior to hard launch in any state. Finally, while the National Verifier will serve to guard against waste, fraud and abuse, enforcement mechanisms such as conduct-based standards targeting bad actors and audits focused on heightened risks can also serve to bolster program integrity.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



John J. Heitmann  
Joshua Guyan  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
(202) 342-8400

*Counsel to the National Lifeline Association*

Enclosure

cc: Chairman Ajit Pai  
Jay Schwarz

# **EXHIBIT A**



## Lifeline Reform 3.0: Getting It Right by Putting Low-Income Consumers First

### NaLA Champions Regulatory Reform While Promoting Industry Self-Regulation and Best Practices.

Since 2012, NaLA and its member companies have been strong proponents of industry self-regulation, best practices and regulatory reforms designed to preserve the integrity of the Lifeline program by protecting it from waste, fraud and abuse while promoting affordable access to essential communications services.

- NaLA's agent certification program, real-time review, photo ID and proof capture, and pre-NLAD intra- and inter-ETC duplicate screening are examples of how NaLA and its member companies develop and implement self-regulatory best practices to guard against potential waste, fraud and abuse

### The Proposed Ban on Wireless Resellers Must Be Rejected.

Wireless resellers play a central role in the Lifeline program by driving adoption, competition and service-level innovation. The record contains nearly unanimous opposition to the proposed wireless reseller ban, including comments from CTIA, US Telecom, Verizon, Sprint, NARUC and several states individually, NASUCA, Citizens Against Government Waste, Veterans and Seniors organizations. **Eliminating wireless resellers would:**

- **Harm consumers** by forcing about 7 million or roughly 70% of all Lifeline subscribers to find new Lifeline service providers and plans, leaving too many without affordable options and some with no options at all
- **Fail to bolster program integrity or guard against waste, fraud and abuse** (adopting conduct-based standards and agent registration would properly focus on bad actors rather than on business models)
- **NOT bridge the digital divide** (eliminating resellers would end the primary means through which Lifeline spurs facilities deployment)
- **Upend the states' role in designating ETCs**, as well as the reliance interests of wireless resellers and landline providers (who have been relieved of the obligation to provide Lifeline based on the presence of and consumers' preference for the mobile voice and broadband services offered by wireless resellers)

### The FCC Should Maintain Facilities Forbearance.

The FCC should not depart from a decade worth of precedents in which it has concluded that **Section 10 requires forbearance** from the facilities requirement for Lifeline ETCs.

- Adopting the facilities definition proposed in the NPRM would be arbitrary and capricious; doing so would disregard the statutory language acknowledging resale

### The Subsidy Pass-Through Proposal Is Functionally a Reseller Ban that Must Be Rejected.

The proposal to require resellers to pass-through to their underlying carrier the full amount of the \$9.25 subsidy would **eliminate wireless resellers** from the program, as there would be no revenue left to support the product and services.

- Once the full amount of the discount is applied to the services and reimbursed, the FCC should not regulate

### The FCC Should Prioritize Affordability and Consumer Choice by Correcting Past Missteps.

The FCC should roll-back the Wheeler era **minimum service standards** and **voice support phase-out** that threaten to deny consumers access to affordable choices that best meet their needs.

- Full support for voice services should be available everywhere – not just in rural America
- The FCC should act now to prevent unintended minimum service standards-driven price increases on Lifeline subscribers
- Freezing or eliminating automatically escalating Lifeline minimum service standards will allow consumers to choose among options of voice and data, including bundles, that strike the best balance between affordability and access for each consumer
- Any minimum service standards retained should incorporate a **1,000 unit standard** that empowers consumers to use bundled voice and data services in a manner that best meets each consumer's needs

## **The National Verifier Must Incorporate a Service Provider API and More Robust Access to Eligibility Databases to Reduce Barriers for Eligible Consumers, Minimize Program Costs and Eliminate Waste, Fraud and Abuse.**

The FCC should fully implement the National Verifier prior to considering additional requirements to provide proof of eligibility upon recertification, other than in cases where the consumer identifies a change in his or her qualifying eligibility program.

- The decision not to develop and implement a service provider API for the National Verifier is wasteful and unnecessarily burdensome for consumers, USAC and ETCs. **Without an API:**
  - USAC will need to screen 100% of all applicants instead of taking advantage of ETC screening tools thereby needlessly **increasing costs** to the program
  - Consumers will be forced to enter personal information twice creating a **barrier to participation** as well as posing **data integrity issues**, which will further increase costs by forcing manual USAC review of exceptions and higher call center volumes
  - ETCs will be unable to efficiently offer online enrollment, making it **more difficult and costly to enroll eligible subscribers, especially in rural areas**
- The National Verifier should not proceed to hard launch in any state in which it lacks access to enrollment databases that allow **automatic re-verification of a substantial majority of Lifeline subscribers** and verification of new applicants' eligibility
- The National Verifier should **leverage private party access to state eligibility databases** by accepting proof of eligibility generated by MCOs and other trusted third parties with such access

## **A Maximum Discount Requirement Would Be Administratively Unworkable.**

The maximum discount or a minimum charge proposal should be rejected because many Lifeline subscribers cannot consistently afford to pay set amounts and otherwise lack credit or other reliable means to pay.

- The benefits of developing a process to properly assess ability to pay and a system to impose and collect monthly payment requirements would fail to outweigh the costs of providing \$111 in annual benefits

## **NaLA Supports a Budget for the Lifeline Program.**

The Lifeline program could benefit from a self-enforcing budget mechanism that operates on an annual basis with prospective impact only. NaLA supports the **\$2.3B bipartisan budget** proposal endorsed by NARUC.

## **What the Right, Consumers First Outcome Looks Like.**

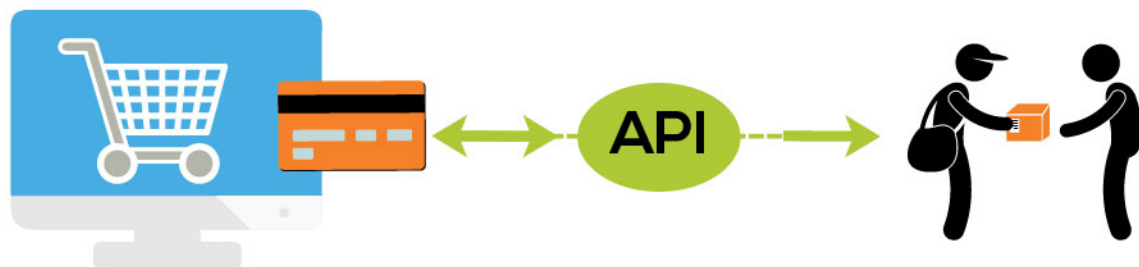
Lifeline is essential to bridging the affordability gap of the Digital Divide. Every low-income consumer who is eligible for Lifeline should have smooth and efficient access to a variety of service options and providers. **Upcoming Commission action on Lifeline should put consumers first by:**

- preserving the important market-based role **wireless resellers** play in the Lifeline program and restoring the ability of wireless resellers to participate in Tribal Lifeline
- solidifying the **National Verifier** as an essential safeguard against waste, fraud and abuse by requiring implementation of a service provider API, developing more robust access to eligibility databases, and leveraging trusted third party access to state databases
- adopt **conduct based standards** to target bad actors and operators needing improvement rather than entire business models; require **agent registration**
- **prioritizing affordability and consumer choice by rolling-back of Wheeler era rules** which sunset support for voice services (in all areas, not just in rural areas) and mandate unduly large service minimums that will force price increases on Lifeline subscribers
- preserving the **state role** in designating ETCs (where states accept that role), with **state and FCC decisions subject to reasonable shot-clocks** designed to ensure that consumers get the benefits of competition
- adopting the NARUC **bipartisan budget** proposal to cap the program at approximately \$2.3B

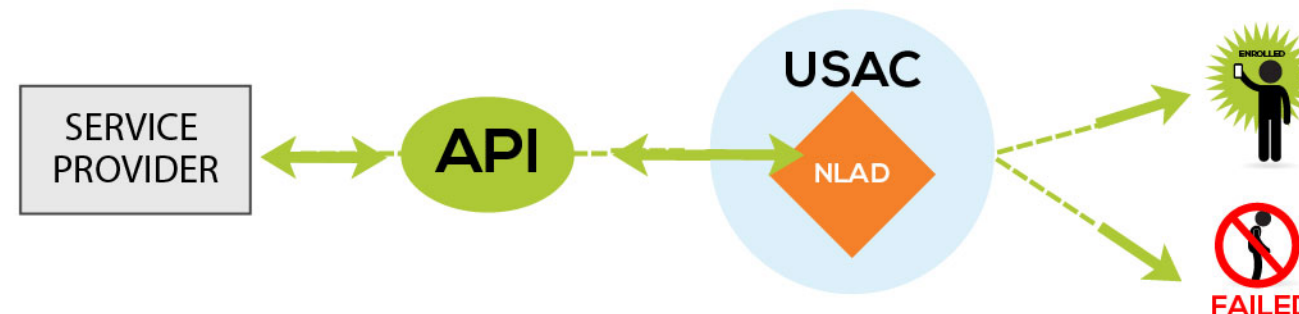


# **EXHIBIT B**

# NATIONAL VERIFIER SERVICE PROVIDER API

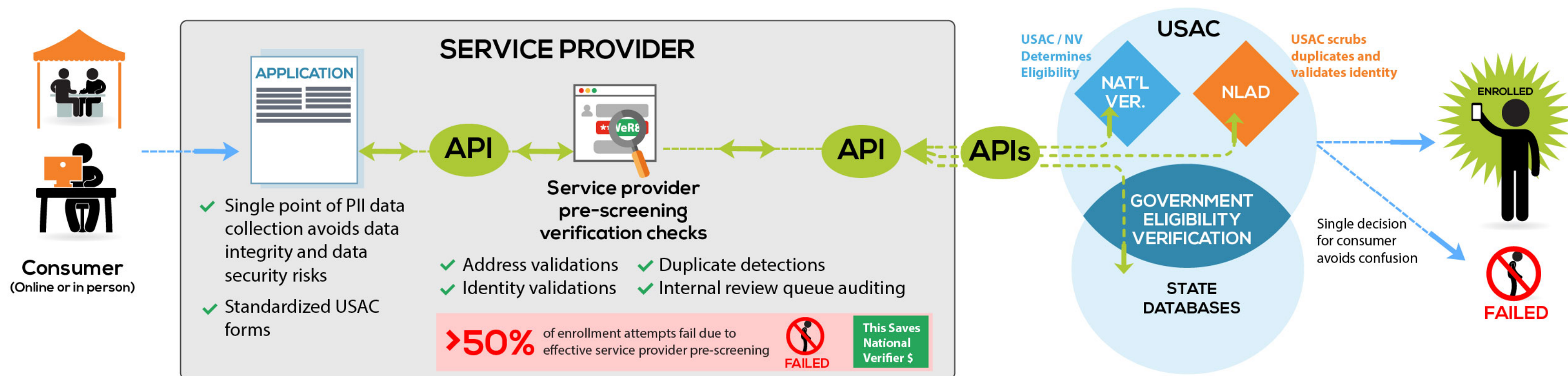


APIs are used everyday to facilitate online transactions



APIs are used by USAC today in NLAD (National Lifeline Accountability Database)

## A SERVICE PROVIDER API IS ESSENTIAL TO A SUCCESSFUL NATIONAL VERIFIER



A National Verifier Service Provider API is the most effective and secure means of enrolling rural Americans and disabled Veterans and Seniors... plus it will save millions of dollars annually in National Verifier operations costs.